IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2284 OF 2007

M/s Nandu Developers ...Petitioners

Versus

Kashinath P. Bhoir & Ors. ...Respondents

Shri K.K.Jadhav for the Petitioners.
Shri D.N.Shah for the Respondent No.1.
Shri A.S.Rao for the Respondent Nos.2 and 3.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 03, 2007.

P.C.:

1. The Petitioner in this Petition under Article 227 of the Constitution of India is the original first Defendant. The Petitioner applied under section 9A of the Code of Civil Procedure, 1908 for framing preliminary issue as regards pecuniary jurisdiction of the trial Court to entertain and try the suit filed by the first Respondent. By the impugned judgment and order dated 01st December, 2006 the learned trial Judge rejected the Application made by the Petitioner.

2. I have heard the submissions of the learned counsel appearing for the parties. The first Respondent is the contesting Respondent being the original Plaintiff. As the legal position stands today, in view of the decision of this court in the case of **Solapur**

Social Urban Co-operative Bank Ltd Vs. Nigam A. Mannan Beskar (2006(4) Bombay Cases Reporter Page 217), section 9A of the said Code could not have been invoked by the Petitioner. Moreover, the learned trial Judge could not have made any adjudication on merits as the Application under section 9A of the said Code was itself not tenable. Apart from this fact, an issue of valuation of the suit for jurisdiction and court fees was raised. The decision on the said issue requires an enquiry to be made under section 8 of the Bombay Court Fees Act, 1959. While deciding the Application under section 9A, the learned trial Judge could not have decided the issues raised by the Petitioner.

3. As an Application under section 9A was itself not competent, the impugned order dated 01st December, 2006 deserves to be quashed and set aside. However, issue regarding valuation of the suit as well as jurisdiction of the trial Court to entertain the suit will have to be decided by the trial Court at an appropriate stage after permitting the parties to lead evidence. By a separate order passed in a companion Writ Petition, I have already expedited the trial.

4. Hence, Writ Petition is disposed of by passing the following order:

(i) The impugned order dated 01st December, 2006 passed by the trial Court below Application at Exhibit 18 in Regular Civil Suit No.398 of 2006 is quashed and set aside. The Application at Exhibit 18 stands disposed of.

(ii) The issues raised by the Petitioner in the Application at Exhibit 18 as regards valuation of the suit filed by the first Respondent and the pecuniary jurisdiction of the trial Court to entertain and try the suit are expressly kept open.

(iii) The trial Court will decide the aforesaid issues at an appropriate stage.

(iv) All contentions of the parties on merits are expressly kept open.

(v) Writ Petition is partly allowed in above terms with no orders as to costs.

JUDGE